SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SEATTLE

1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711

FOUNDED 1866

HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8164

WRITER'S E-MAIL ADDRESS
ryoung@sidley.com

February 28, 2001

RECEIVED

FEB 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 01-9, Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts

Dear Ms. Salas:

Please accept for filing in the above-referenced proceeding the attached Reply Comments of AT&T Corp. in Opposition To Verizon New England Inc.'s Section 271 Application for Massachusetts. Pursuant to the Public Notice issued January 16, 2001 (DA 01-106), AT&T is submitting an original and one copy of its Reply Comments, including the Declaration of Richard N. Clarke attached thereto.

Thank you for your assistance in this matter.

Very truly yours,

Richard E. Young

REY:pdr

Enclosures

RECEIVED

FEB 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts	)	CC Docket No. 01-9

REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO VERIZON NEW ENGLAND INC.'s SECTION 271 APPLICATION FOR MASSACHUSETTS

Mark C. Rosenblum
Richard H. Rubin
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4481

David W. Carpenter
Mark E. Haddad
David M. Levy
David L. Lawson
Richard E. Young
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, D.C. 20006
(202) 736-8000

ATTORNEYS FOR AT&T CORP.

Filed: February 28, 2001

ORIGINAL

TABLE OF CONTENTS

FCC ORDERS CITED

SHORT CITE	FULL CITE
Ameritech Michigan Order	Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997).
Bell Atlantic New York Order	Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999).
Line Sharing Reconsideration Order	Third Report and Order on Reconsideration, Fourth Report and Order on Reconsideration, Third Further Notice of Proposed Rulemaking, Sixth Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. Nos. 98-147 and 96-98 (rel. January 19, 2001)
Local Competition Order	First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996), *aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).
SBC Kansas/Oklahoma Order	Memorandum Opinion and Order, *Joint Application by SBC Communications Inc. et al for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Dkt. No. 00-217 (rel. January 22, 2001)
SBC Texas Order	Memorandum Opinion and Order, *Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354 (2000)

MISCELLANEOUS PLEADINGS CITED

DOJ Eval. I	Evaluation of the United States Department of Justice, *Application by Verizon New England, Inc. et al for Authorization to Provide In-Region InterLATA Services in Massachusetts*, CC Dkt. No. 00-176 (October 27, 2000)
DOJ Eval. II	Evaluation of the United States Department of Justice, *Application by Verizon New England, Inc. et al for Authorization to Provide In-Region InterLATA Services in Massachusetts*, CC Dkt. No. 01-9 (February 21, 2001)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon New England Inc.,	)	
Bell Atlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long Distance	)	**CC Docket No. 01-9**
Company (d/b/a Verizon Enterprise Solutions),	)	
And Verizon Global Networks Inc.,	)	
For Authorization to Provide In-Region,	)	
InterLATA Services in Massachusetts	)	

REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO VERIZON NEW ENGLAND INC.'S SUPPLEMENTAL SECTION 271 APPLICATION FOR MASSACHUSETTS

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these reply comments in opposition to the supplemental application of Verizon New England Inc. ("Verizon") to provide in-region, interLATA authority in Massachusetts.

INTRODUCTION AND SUMMARY

The comments overwhelmingly confirm that Verizon has not yet satisfied the requirements for long-distance authorization in Massachusetts. First, the comments demonstrate that Verizon has not yet established cost-based rates for unbundled network elements ("UNEs"). For example, numerous commenters, including the Department of Justice (DOJ), point out that Verizon has done nothing to address the defects in its prior application with respect to UNE-pricing, which was one of the reasons that Verizon was compelled to withdraw its initial application. And WorldCom, Inc. ("WorldCom"), has now provided additional evidence demonstrating that: (1) Verizon's current UNE prices are far in excess of Verizon's. properly determined Total Element Long-Run Incremental Costs ("TELRIC"); and (2) that as a result of these unlawfully high UNE rates, neither WorldCom nor any efficient CLEC could justify broad-scale residential entry using the UNE-platform.

The commenters also confirm that long-distance authorization cannot now be found to be in the public interest. Such authorization would render Verizon the only carrier able to offer residential consumers throughout Massachusetts one-stop shopping for both local and long-distance service. Verizon would therefore be able rapidly to gain long-distance market share and then raise long distance prices without fear of competition, for no other provider could match its bundled service offering. Such remonopolization of the long-distance market in Massachusetts would leave consumers worse off than before the 1996 Act was passed, which is why the Massachusetts Attorney General has also filed comments opposing approval of the application.

Only the Massachusetts Department of Telecommunications and Energy ("DTE") argues that Verizon's UNE prices are cost-based, but its limited pricing comments fail to join issue with the concerns raised by CLECs throughout these proceedings. The DTE does not address the fact that Verizon has not actually adopted the New York switching rates, does not address its and Verizon's failure to offer any analysis other than the reference to New York to demonstrate that Verizon's switching prices are in fact cost-based, and does not address the commenters' showing that Verizon's UNE-loop rates are not cost-based. The DTE also fails to address the full implications of the *SBC Kansas/Oklahoma Order* for this application, which precludes approval here. Finally, the DTE's comments summarily dismiss the CLECs' showing that widespread residential entry cannot occur given the current UNE rates, without ever addressing the implications of that critical fact for its assertion that UNE rates must be cost-based, or for the public's interest in a truly competitive marketplace. In these circumstances, the DTE has not provided the Commission with the "determinations of fact that are supported by a detailed and extensive record" that the Commission has held are a prerequisite before it can accord deference to the comments of a State commission. *See Bell Atlantic New York Order,* ¶ 20; *SBC Kansas/Oklahoma Order,* ¶ 10.

Second, the comments demonstrate that Verizon is not provisioning DSL service to CLECs in accordance with its checklist obligations. Verizon has not implemented its duties to provide either line sharing or line splitting, and it continues to discriminate against CLECs in the provisioning of xDSL loops. As a result, Verizon and its data affiliate, Verizon Advanced Data Incorporated ("VADI"), are rapidly gaining new DSL customers throughout the state, while CLECs -- at best -- are struggling to survive or, even worse, are exiting the Massachusetts market entirely. Finally, the comments demonstrate that Verizon is unable to provide UNEs and special access services simultaneously and adequately, which is further proof that it is not in the public interest to grant Verizon's application now.

I. VERIZON'S UNE RATES BOTH EXCEED TELRIC LEVELS AND DEMONSTRATE THAT APPROVAL OF VERIZON'S APPLICATION IS NOT IN THE PUBLIC INTEREST

The comments that address UNE pricing – including those of the Massachusetts Attorney General -- agree that Verizon's UNE prices are not cost-based and preclude any finding that Verizon's entry into the long-distance market is in the public interest.[1] The DTE's limited comments to the contrary do not overcome this showing.

[1] *See* WorldCom Comments at 2-23; Mass. AG Comments at 2-7; Association of Communications Enterprises ("ASCENT") Comments at 7-10; Competitive Telecommunications Association ("CompTel") Comments, Att. Two at 6-9; Mass. Coalition for Competitive Phone Service Comments at 2; Sprint Comments at 8-11.

A. The Comments Provide Further Confirmation That Verizon's UNE Rates Are Not TELRIC-Compliant.

As the Massachusetts Attorney General and other commenters note, Verizon has presented *no* evidence that the revised UNE rates it filed in Massachusetts on October 13, 2000, comply with TELRIC standards.[2] The Massachusetts DTE has never examined those rates, or CLECs' objections to them, to determine whether they are cost-based, and Verizon itself has not provided this Commission with an evidentiary foundation for its assertion that the rates are cost-based. Thus, Verizon has failed to meet its burden to demonstrate that its UNE rates comply with the checklist.

WorldCom's comments underscore the importance of Verizon's failure of proof with yet more evidence that Verizon's rates are not cost-based.[3] With respect to Verizon's switching and related usage rates, WorldCom's evidence establishes that these rates "remain well above the level that the rates would be if Verizon's calculations were rerun using inputs and assumptions that are consistent with the findings of the FCC, other incumbent LECs, and even Verizon in other states." WorldCom Comments, Frentrup Decl., ¶¶ 6-16. WorldCom's evidence

[2] *See, e.g.*, Mass. AG Comments at 3-6; ASCENT Comments at 9-11; Sprint Comments at 9-10; AT&T Comments at 8. In addition, the Department of Justice ("DOJ") reiterates its earlier position that: (1)"there is substantial reason to believe that UNE platform entry has been impeded by Verizon's failure, at least until quite recently, to make certain network elements available to competitors at cost-based prices"; (2) in view of the fact that CLECs have made extensive use of the UNE platform in New York and other States but not in Massachusetts, "The most plausible explanation for the limited use of the UNE-platform in Massachusetts appears to be the relatively high prices charged by Verizon for certain unbundled network elements, and there are other reasons to suspect that in some cases those prices have not been based on the relevant costs of the network elements," including "a disparity between the prices of UNEs in Massachusetts and the prices of those same elements in the other states"; and (3) Verizon has provided no underlying documentation to show that its "new rates are cost based in Massachusetts." *See* DOJ Eval. I at 17-20; DOJ Eval. II at 3 n.9 (stating that "Verizon's current application provides little additional information about pricing issues," and requesting that DOJ's previous Evaluation of Verizon's first Massachusetts application with respect to pricing issues be incorporated by reference into the record of the instant proceeding).

[3] *See, e.g.*, WorldCom Comments at 2-23 and 34-40, Frentrup Decl. (¶¶ 5-28), and Bobeczko/Huffman Decl. (¶¶ 3-9); AT&T Comments at 7-8, 12-13, 21-22 (describing evidence previously submitted by AT&T and WorldCom demonstrating that UNE rates exceed TELRIC levels, and calculating profit margins under current rates).

also shows that even the New York switching rates would need to be reduced by at least 40 percent in order to be TELRIC-compliant.[4]

As for loop rates, WorldCom's testimony confirms that the current loop rates in Massachusetts are "grossly in excess of the cost of the loop," principally because Verizon has used "inputs . . . that bear little or no relation to either forward-looking inputs, or to Verizon's actual practices." WorldCom Comments at 19. These misstated inputs include the use of impermissibly low utilization factors, an inflated cost of capital, and excessive costs for poles, network interface devices, and cable. *Id.* at 19-22 & Frentrup Decl., ¶¶ 17-28. When these inputs are modified to reflect those adopted by the Commission in its Synthesis Model, Verizon's loop rates are overstated by 31.6% Statewide.[5]

The Commission has previously indicated that it "will consider carefully the State commission's assessment of pricing contained in its checklist compliance verification, the methodology used to derive prices for checklist items, and the allegations of interested parties in the section 271 proceeding." *Ameritech Michigan Order,* ¶ 288. Here, such consideration requires rejection of Verizon's application. The DTE has not made any "assessment" of Verizon's UNE prices or employed *any* "methodology" to determine that those prices are TELRIC-compliant, nor has it responded to the substantive "allegations of interested parties" that the rates are not cost-based.[6] And Verizon's recent February 15 *ex parte* did not even

---

[4] *See* WorldCom Comments, Frentrup Decl., ¶ 9. Similarly, the testimony that AT&T presented in the current UNE rate proceeding before the New York Public Service Commission ("NYPSC") demonstrated that in New York the current switching rates exceed Verizon's forward-looking economic costs by 70 percent or more. *See* AT&T Comments at 9 & n.14 & Att. 1, pp. 10-11, 37, 109-150.

[5] WorldCom Comments at 19-22 & Frentrup Decl., ¶¶ 17-28. WorldCom's analysis is consistent with that previously performed by AT&T, which concluded that correcting the erroneous inputs in Verizon's cost model would require a reduction of at least 30 percent in Verizon's loop costs. *See* AT&T Comments at 21-22 & nn.28-29.

[6] In contrast to the DTE, the Massachusetts Attorney General recognizes that the evidence presented by AT&T and WorldCom "is some indicia that New York rates should not serve as Massachusetts' permanent rates, even for the duration of the DTE's UNE docket." Mass. AG Comments at 5-6 n.12.

attempt to provide the missing proof.[7] Accordingly, there is no evidentiary basis on which this Commission could conclude that Verizon had satisfied its obligation to demonstrate that its current rates satisfy the statutory standard.

B. The DTE's Reliance On Verizon's Decision To Adopt Many Of The UNE Rates Currently In Place In New York Is Misplaced.

Alone among the commenters, the DTE concludes that Verizon's UNE rates comply with the checklist requirements. DTE Eval. at 18-22.[8] The DTE reasons that "[n]othing filed by VZ-MA in its supplemental application causes any concern to the Department or prompts us to reconsider our earlier, extensive findings." *Id.* at i. The DTE's broad rationale is unsustainable for two reasons. First, the DTE never has made any "findings" at all with respect to the October 13th rates on which Verizon now relies. As the Massachusetts Attorney General observes, Verizon "has not demonstrated that its Massachusetts UNE prices (based on its UNE prices in New York) are reasonable," and the DTE did not "investigate" the rates filed in Massachusetts on October 13, 2000, either prior to or since their adoption. Mass. AG Comments at 5-6. Second, even if nothing in *Verizon's* supplemental application caused the DTE to change its opinion, the DTE has not responded to the numerous *CLEC* objections to Verizon's UNE prices.

Rather than address CLEC concerns, the DTE's conclusion that Verizon's rates are cost-based rests entirely on its assertions that Verizon has filed rates that are equivalent to those referenced in the Commission's *Bell Atlantic New York Order*, that Massachusetts and New York are adjoining States with similar rate structures for switching, and that under the *SBC*

[7] *See* Verizon *ex parte* letter to Magalie Roman Salas in CC Docket No. 01-9, dated February 15, 2001 ("Verizon February 15 *ex parte*").

[8] The only other commenter supporting Verizon's application provides no basis for its bald assertion that Verizon has shown compliance with the checklist, and does not even address the UNE pricing issue. Telecommunications Advocacy Project Comments at 3-4.

Kansas/Oklahoma Order that is sufficient to demonstrate TELRIC compliance. DTE Eval. at 21. However, the DTE's cursory analysis fails to address the detailed showing made by other commenters, both in response to Verizon's initial application and this supplemental application, that (1) the New York rates have *not* effectively been adopted in Massachusetts; (2) the *Bell Atlantic New York Order* does *not* support a finding of checklist compliance here with respect to UNE pricing; and (3) the *SBC Kansas/Oklahoma Order undermines*, rather than supports, any finding of checklist compliance here.

First, numerous commenters note that any reliance on the apparent similarity between UNE prices in Massachusetts and those in New York is misplaced because the Massachusetts switching rates are not, in reality, equivalent to those in New York. The current New York *interim* switching rates were prescribed by the NYPSC on the basis of testimony regarding switch discounts that was later shown to be false.[9] The New York PSC's ongoing pricing proceeding, in which AT&T has introduced extensive evidence proving that Verizon's switching rates are grossly inflated (*see* AT&T Comments at 9, 14, 23), is thus intended to enable the New York PSC to determine what *retroactive* changes need to be made to Verizon's New York switching rates and to order a true-up based on those changes.

In sharp contrast, Verizon has not committed to accept, and the DTE has not committed to enforce, the revised switching prices to be set by the New York PSC, subject to a retroactive true-up.[10] The alleged equivalence between the Massachusetts and New York

[9] *See, e.g.,* AT&T Comments at 9 n.13; ASCENT Comments at 7; Sprint Comments at 9-10; WorldCom Comments at 17.

[10] Although the DTE (like the NYPSC) is currently conducting a proceeding to review Verizon's UNE rates, the DTE makes no commitment to prescribe the same rates as those that will be determined by the NYPSC for New York – even though the NYPSC is expected to issue a final decision several months before the DTE. Based on the current procedural schedule in the New York UNE rate proceeding, it is expected that the NYPSC will issue a final decision in mid-2001. The DTE, by contrast, has committed only to "hav[ing] new rates in effect by December of this year," with no commitment either to adopt the revised New York rates or to impose a true-up. DTE Eval. at 22.

switching rates is thus, at best, only superficial. In reality, once the New York pricing proceeding concludes, the New York PSC will set different switching rates applicable not only prospectively but *retrospectively* as well.[11] Thus, within months, the supposed equivalence between the Massachusetts and New York switching rates will vanish.

Second, the commenters further demonstrate that key circumstances that led the Commission to approve Bell Atlantic's application for interLATA authorization in New York are entirely missing here.[12] In New York, the Commission was presented with a situation in which the State commission had (1) set UNE prices at a level that had attracted significant UNE-P based residential entry; (2) provided a methodological and analytical defense of the UNE-rates that it set; and (3) committed to examine and fix the problems that CLECs had identified with Verizon's switching rate and impose a true-up.[13] Here, by contrast, Massachusetts UNE rates have *never* been at a level that has generated UNE-P based competition, the State commission has *never* analyzed or defended Verizon's UNE prices on the merits, and there is *no* true-up mechanism in place. Thus, the DTE's brief comments fail to address the key differences that make its reliance on the New York application unreasonable here.

In this regard, Verizon's February 15 pricing *ex parte* fails to supply the analysis missing from the DTE's submission. In that *ex parte*, Verizon purports to demonstrate that its switching and loop costs are comparable in New York and Massachusetts. The *ex parte* includes two one-page summary tables that purport to compare loop and port costs, and lines per square

---

[11] *See, e.g.*, AT&T Comments at 10; Mass. AG Comments at 5-6 (noting that "the UNE rates are not interim rates subject to refund").

[12] *See, e.g.*, AT&T Comments at 9-15; ASCENT Comments at 7-8; CompTel Comments, Att. 2 at 6-7; Mass. Coalition for Competitive Phone Service Comments at 2; Sprint Comments at 9-10; WorldCom Comments as 12-17.

[13] *See, e.g.*, AT&T Comments at 9-15; ASCENT Comments at 7-8; CompTel Comments, Att. 2 at 6-7; Sprint Comments at 9-10; WorldCom Comments at 13-17.

mile, in the two States.[14] This "evidence," however, represents nothing more than a recitation of a few summary numbers, without any cost study or supporting documentation demonstrating how Verizon derived them.[15] It was not presented to or passed on by the DTE, it does not explain why lower UNE costs recently established in States *other* than New York are not relevant to Massachusetts, and it does not explain why the Commission may disregard the substantial evidence that CLECs have set forth in New York demonstrating that the current New York UNE rates are substantially inflated.

In particular, Verizon nowhere explains why cost comparisons to other States besides New York may be ignored. As ASCENT states, "There is no more reason to assume that New York switching costs are a meaningful proxy for Massachusetts switching costs than are Pennsylvania switching costs, which are substantially lower than New York switching costs." ASCENT Comments at 9. Similarly, Verizon does not answer WorldCom's critical point that it is implausible that Verizon's rates in Massachusetts – some of which are double the rates in Pennsylvania and numerous other states cited by WorldCom – reflect the fact that Verizon's costs are twice as high in Massachusetts. WorldCom Comments at 10-11. Finally, and most importantly, even if Verizon's switching and loop costs (or network construct and engineering assumptions) are comparable in New York and Massachusetts, that fact alone simply does not begin to address the fundamental issue that CLECs have demonstrated in the New York proceedings that the current New York rates (and, by Verizon's reasoning, those in Massachusetts) greatly exceed TELRIC.

---

[14] Verizon February 15 *ex parte*, tables entitled "New York Vs. Massachusetts Loop & Port Costs" and "Lines per Square Mile in NY and MA (by FCC Zone)."

[15] Indeed, although Verizon asserts in one table that its cost comparison is "based on HCPM relationships," it provides no explanation of how HCPM was used in its methodology. If Verizon could show that its Massachusetts rates are TELRIC-complaint simply by submitting these two high-level tables, the evidentiary showing required by

Third, the DTE's reliance on the *SBC Kansas/Oklahoma Order* as precedent for approving this application is misplaced. Contrary to the DTE's claim that this *Order* leads to the "inescapable conclusion that [Verizon's] rates for local switching are reasonable and are . . . within a range that application of TELRIC principles would produce" (DTE Eval. at 21), the *Order* actually forecloses that conclusion.

To begin with, it is important to recognize, as does the DTE, that the Commission stated only that it would "consider" rates from previously approved States, and only "in appropriate circumstances." *Id.* at 19, 21; *SBC Kansas/Oklahoma Order*, ¶ 82. The relative rate and cost comparisons endorsed in the *SBC Kansas/Oklahoma Order* only makes sense when the Commission can be confident that the rates approved in the "benchmark" State are, in fact, cost-based. As noted above, New York clearly does not meet that standard with respect to switching rates – the switching rates approved in New York were based on false testimony, are grossly overstated, and will shortly be changed.

And when Texas (where UNE recurring rates were not challenged in the 271 proceeding) is used as the benchmark, the very type of analysis that the Commission used in the *SBC Kansas/Oklahoma Order* only confirms that Verizon's Massachusetts UNE rates (and its current New York rates, as well) far exceed TELRIC levels. In the *SBC Kansas/Oklahoma Order*, the Commission: (1) determined whether the rates, as set by the BOC, are consistent with TELRIC principles; (2) compared the rates and costs of UNE in the States for which the applicant was seeking Section 271 authority (Oklahoma and Kansas) with those in a State for which Section 271 authority had already been granted (Texas); and (3) using the Commission's

---

the *SBC Kansas/Oklahoma Order* would be rendered virtually meaningless. *See SBC Kansas/Oklahoma Order*, ¶ 82 & n.244.

Synthesis Model, compared the costs of UNEs of these States to determine whether any rate similarities or differentials are based on costs. *See SBC Kansas/Oklahoma Order,* ¶¶ 80-84.

Verizon's Massachusetts rates fail under these tests. First, AT&T and WorldCom have demonstrated that the UNE rates fail to comply with TELRIC standards in numerous respects, particularly with respect to the inputs and assumptions that Verizon used to calculate the rates.[16] Thus, there is *no* analysis by the State commission here that responds to the CLECs' challenges or purports to defend the rates on which Verizon relies as being cost-based.

Moreover, Verizon does not even attempt to use the same cost analysis based on the USF Synthesis Model that the Commission applied in the *SBC Kansas/Oklahoma Order*. That analysis, when applied here, demonstrates conclusively that the Massachusetts rates are not cost-based.

Specifically, when using only the *relative* outputs of the Commission's Synthesis Model, and excluding expenses not associated with UNEs (just as in the *SBC Kansas/Oklahoma Order*), the Massachusetts rates plainly fail to comply with TELRIC:

- The Massachusetts rate for the UNE platform is between 36% and 95% higher than its expected level, depending upon whether the Kansas, Oklahoma, or Texas UNE-P rate is used as the benchmark for TELRIC.
- The Massachusetts rate for the non-loop portion of the UNE platform is between 82% and 222% higher than its expected level, depending upon whether the Kansas, Oklahoma, or Texas non-loop rate is used as the benchmark for TELRIC.
- The Massachusetts rate for the loop portion of the UNE platform is between 8% and 42% higher than its expected level, depending upon whether the Kansas, Oklahoma, or Texas loop rate is used as the benchmark for TELRIC.[17]

---

[16] *See, e.g.,* AT&T Comments at 6-24; WorldCom Comments at 10-22 & Frietrup Decl.; AT&T Reply Comments filed November 2, 2000, in CC Docket No. 00-176 at 12-19, 23-24, 32-33 & Baronowski Decl. at 3-9.

[17] *See* AT&T Comments at 20, 22-23 & Attachment 4; AT&T's Feb. 21, 2000 *ex parte* letter to Magalie Roman Salas ("AT&T February 21 *ex parte*").

Such a comparison simply corroborates the evidence in the current NYPSC rate proceedings demonstrating that the current New York rates are not TELRIC-compliant. AT&T Comments at 20, 22-23.

Furthermore, using the "absolute" outputs from the Synthesis Model, and again excluding expenses not associated with UNEs, the current rates in Massachusetts for the UNE platform, the non-loop portions of the platform, and the loop portion of the platform exceed TELRIC by 75%, 182%, and 29%, respectively.[18]

Verizon's February 15 *ex parte* submission asserts that "Cost comparisons between jurisdictions [are] meaningful only if networks, costing approaches, and regulatory adjustments are similar" – and implies that only a comparison between New York and Massachusetts costs is appropriate.[19] But the Commission has never suggested that the conditions Verizon describes must exist before, in its view, the costs of UNEs in other States can be compared through the use of its Synthesis Model. To the contrary, in the *SBC Kansas/Oklahoma Order*, the Commission stated that the Synthesis Model "accurately reflects the relative cost differences among states." *SBC Kansas/Oklahoma Order*, ¶ 84. Indeed, the very purpose of the approach endorsed in the *SBC Kansas/Oklahoma Order* is to allow comparisons between States where costs differ, regardless of the reasons why costs differ.[20] And, even if Verizon's position were correct, Verizon does not explain why it compares its rates in Massachusetts *only* to those in New York – and not to other States in its own region such as

[18] *See* AT&T Comments at 20 & Attachment 4; AT&T February 21 *ex parte*; AT&T's Feb. 1, 2001, *ex parte* letter to Magalie Roman Salas (previously submitted as Attachment 3 to AT&T's Comments). The percentages, described herein, by which the Massachusetts UNE rates exceed TELRIC when the Oklahoma UNE rates are used as the benchmark for TELRIC are, in fact, understated. As AT&T has argued in its pending appeal of the *SBC Kansas/Oklahoma Order*, the current levels of recurring charges in Oklahoma substantially exceed costs.

[19] Verizon February 15 *ex parte*, table entitled "Why New York is an Appropriate Surrogate for Massachusetts."

[20] Of course, as noted above, Synthesis Model cost comparisons cannot have any relevance at all if the rates of the "benchmark" State used for comparison are not cost-based.

Pennsylvania and Delaware, where its criteria also appear to be satisfied but (not surprisingly) switching rates are much lower. *See* AT&T Comments at 18-19 n.25. Thus, even if the Commission were to apply the analysis it used in the *SBC Kansas/Oklahoma Order* to the Massachusetts rates at issue here, that analysis would simply provide yet more evidence that the Massachusetts rates far exceed any level that can reasonably be labeled TELRIC.

Finally, there can be no question that the degree to which UNE prices are inflated in Massachusetts is competitively significant and fully sufficient to warrant rejection of the application on this ground alone. UNE prices based on forward-looking, economic costs are critical for the development of UNE-based competition in the local exchange market.[21] The competitive significance of Verizon's inflated rates is evident both from the lack of broad-based, statewide residential UNE-P competition in Massachusetts, and from the commenters' margin analyses, which demonstrate that even efficient CLEC providers could not possibly justify broad-scale UNE-P entry using these input prices.[22]

While the DTE dismisses such facts as "irrelevant to checklist compliance" (DTE Comments at 22), they are not. The fact that UNE prices are set at a level that precludes effective competition is, at the very least, a highly relevant signal that UNE prices exceed TELRIC. Since there is no indication that Verizon is losing money providing local service in Massachusetts, the fact that other providers cannot profitably enter the local market strongly

---

[21] *See, e.g., Local Competition Order*, ¶ 679 (stating that adopting a pricing methodology based on forward-looking, economic costs "simulates the conditions in a competitive marketplace" and "allows the requesting carrier to produce efficiently and compete effectively, which should drive retail prices to their competitive levels"); *Ameritech Michigan Order*, ¶ 287 ("Determining cost-based rates has profound implications for the advent of competition in the local markets and for competition in the long-distance market. Because the purpose of the checklist is to provide a gauge for whether the local markets are open to competition, we cannot conclude that the checklist has been met if the prices for interconnection and unbundled elements do not permit efficient entry").

[22] *See, e.g.*, AT&T Comments at 12-13, 23-27 & Att. 2; WorldCom Comments at 23, 35-36 & Bobeczko/Huffman Decl.

suggests that Verizon has yet to reduce its network element prices to true efficient forward-looking cost.

It is also critical to recognize the competitive importance of even seemingly small percentage overstatements in UNE rates. The DTE's assumption that a wide range of rates may all accord with TELRIC, and that competitive entry can be expected to occur as long as UNE prices are within such a broad range, is unfounded as a matter of economic principle and simply wrong as a matter of marketplace fact. Even a slight overstatement of UNE rates above TELRIC levels severely impedes competition.

For example, as set forth in the attached Declaration of Richard N. Clarke, the cost of obtaining UNEs from an ILEC typically represents the vast majority of the total revenues that a CLEC can expect to receive as a UNE-based provider of local exchange and exchange access services, with a reasonable estimate being approximately 70 percent. Clarke Decl., ¶ 8. In these circumstances, each one percent overstatement in UNE prices reduces a CLEC's "top-line" net revenues by more than 0.7 percent. *Id.* Thus, a 15 percent overstatement in UNE prices would reduce the net unit revenues available to CLECs by approximately 10 percent. *Id.* Moreover, because the potential margins from UNE-based competitive entry are narrow, a 15 percent overstatement in UNE prices (i.e., a ten percent increase in CLEC costs) is likely to eliminate the potential for profit for competitive entry by most CLECs in most markets. *Id.*[23]

It is also important to recognize that the most severe competitive impact from inflated UNE prices is likely to occur in residential and rural local exchange markets, where profit margins are generally lower than for business and urban customers. Clarke Decl.,

[23]The adverse impact of an overstatement in prices is not unique to CLECs. For an average firm in the S&P 500, a ten percent overstatement of input prices would reduce the company's return on investment by more than 50 percent. Clarke Decl., ¶ 13. If the input prices were overstated by 15 percent, 90 percent of the S&P 500 firms

¶¶ 20-26. Thus, even if a small overstatement of UNE prices does not preclude all CLEC entry, it is likely to deprive large segments of customers the benefits of competition that Congress intended to provide in the 1996 Act. The Commission should therefore vigilantly and scrupulously adhere to its view that "[d]etermining cost-based rates has profound implications for the advent of competition in the local markets and for competition in the long distance market" (*Ameritech Michigan Order*, ¶ 287), and should reject Verizon's application for its failure to demonstrate that it has established cost-based UNE-rates.

C. Because the Current Levels of Verizon's UNE Rates Prevent Significant UNE-Based Competitive Entry Into the Residential Market in Massachusetts, Approval of Verizon's Application Would Be Inconsistent With the Public Interest, Convenience, and Necessity.

As AT&T's and WorldCom's comments show, even if the current UNE rates in Massachusetts were cost-based (and they are not), the Commission should still deny the application. In the absence of significant and irreversible competition for residential customers, Verizon's entry into the long-distance market would be inconsistent with the public interest, convenience, and necessity, regardless of whether the rates comply with the statutory requirement. *See* AT&T Comments at 24-29; WorldCom Comments at 34-37.

Hardly any Massachusetts residential lines are served through the UNE platform today. Indeed, Verizon's own February 15 *ex parte* submission acknowledges that only 9,200 residential lines were served through the UNE-P in Massachusetts by CLECs as of the end of December 2000. That amounts to only about *three-tenths of one percent* of all residential lines in Massachusetts.[24] Furthermore, it is clear that the rates Verizon filed in October did not

---

would earn less than the 11.25 percent cost of capital rate established as the benchmark by the Commission in its *Universal Service Order*. *Id.*, ¶ 14.

[24] Verizon February 15 *ex parte*, table entitled "Verizon – Massachusetts – UNE-P Results – June-Dec. 2000"; AT&T Comments at 3 n.4 (noting that, according to Commission report issued at end of 1999, total number of residential lines in Massachusetts was approximately 2.9 million). The actual number of residential lines served by

generate any significant UNE-P residential entry. Compared to the tens of thousands of UNE-P residential customers added each month in New York and Texas shortly before those 271 applications were granted, from October through December, 2000, the number of residential UNE-P lines in Massachusetts increased by less than 1,500.[25] Thus, UNE-P entry into the residential market remains almost nonexistent, and confirms that the residential local market is not irreversibly open to competition.[26]

The evidence shows, moreover, that the lack of residential competition is due to one simple reason -- the high levels of Verizon's UNE rates, which make UNE-P entry in Massachusetts unprofitable for any efficient CLEC. AT&T Comments at 26-27; WorldCom Comments at 35-36; *cf.* DOJ Eval. I at 18-19. As WorldCom states, "[I]f competitors are not able to make use of BOC facilities, they will not be able to compete with the BOC for residential customers. Therefore, if prices for these elements are too high to permit effective competition, there will be no effective competition." WorldCom Comments at 35.

WorldCom's comments confirm that UNE-P entry is not profitable in the Massachusetts residential market under the current rates. *See id.* at 23, 34-37 &

UNE-P is thus far lower than the 16,900 lines that AT&T had assumed in its opening comments as a "best case" scenario for Verizon because of Verizon's failure to include such data in its supplemental filing. *See* AT&T Comments at 3 n.4, 24.

[25] *See* Verizon's February 15 *ex parte,* table entitled "Verizon – Massachusetts -- UNE-P Results -- June-Dec. 2000." Of the 2,681 additional lines served through the UNE-P during December 2000, only slightly more than 10 percent were residential. *Id.*

[26] Verizon also points in its February 15 *ex parte* submission to the fact that there relatively are more facilities-based residential lines in Massachusetts today than in other States where Section 271 applications have been approved. But that fact does not mean that the local market is irreversibly open to competition, for there are significant limits to this form of entry. A substantial portion of the facilities-based residential lines in Massachusetts represent AT&T customers served by cable facilities. Indeed, in a recent *ex parte* admission Verizon acknowledged that its data on facilities-based residential lines in the State include cable telephony (and that the total number of residential lines it claims to be served by facilities-based carriers includes not only cable telephony, but also the UNE platform). *See* Verizon *ex parte* submission to Magalie Roman Salas, dated February 23, 2001. As AT&T noted previously, the majority of residential customers in Massachusetts do not have access to cable-based telephony services. *See* AT&T Comments at 25 n.40; Declaration of David J. Kowolenko, dated Oct. 16, 2000, and filed with AT&T's initial comments in CC Docket No. 00-176, ¶ 9; *see id.*, ¶¶ 3-8. Thus, in the absence of UNEs priced at cost, most of the Massachusetts residential market is and will remain captive to Verizon.

Bobeczko/Huffman Decl., ¶¶ 3-8; *see also* AT&T Comments at 12-13, 27, & Attachment 2. WorldCom calculates that Verizon's current rates result in a gross margin for CLECs of only $1.32 on a statewide basis, and anywhere from $4.38 to a *negative* margin in areas other than the metro zone (where only 2 percent of the State's population resides). Critically, these figures do not account for CLECs' own internal costs of providing local service, such as billing and customer service, which typically amount to more than $10.00 per month. WorldCom Comments at 23 & Bobeczko/Huffman Decl., ¶¶ 5-7. Such inadequate margins preclude entry by WorldCom -- or any efficient CLEC -- into the residential market in Massachusetts through use of the UNE platform, which is the only viable method of broad-based entry. *Id.* at 23 & Bobeczko/Hoffman Decl., ¶¶ 3-10.

WorldCom's calculations of profit margins are consistent with AT&T's, which showed that a CLEC contemplating statewide entry at the current UNE prices in Massachusetts could expect only a gross margin of $1.52 and $3.78 per customer per month (without considering a CLEC's retailing or operating costs), depending upon the proportion of customers who choose a bundled versus "a la carte" set of local services. These inadequate margins are powerful evidence not only that UNE prices exceed TELRIC levels, but also that the local residential market remains closed to CLECs seeking UNE-based entry.[27]

The DTE claims that "there is no need to discuss margins in the instant proceeding any further," because the *SBC Kansas/Oklahoma Order* held that a margin analysis "is irrelevant to checklist compliance." DTE Eval. at 22. AT&T disagrees. At a minimum, however, the CLECs' margin analysis is relevant to the public interest issue. The Commission

[27] *See* AT&T Comments at 12-13, 26-27 & Attachment 2; WorldCom Comments at 6 ("TELRIC is not designed to guarantee a profit to any particular CLEC [but] the impact of proposed UNE rates on the prospects for competition is relevant to whether these rates are cost-based, and to whether BOC entry into long-distance promotes the public interest").

expressly recognized that any "market factor" that would frustrate the Congressional objective of open markets is relevant to its public interest determination. *See SBC Kansas/Oklahoma Order*, ¶ 267.[28] Moreover, the Joint Commenters are correct that the public interest test "serves as a critical reality check to ensure that local markets are fully open to competition." Comments of ALTS, *et al.* (Joint Commenters) at 14. Thus, although the 1996 Act does not guarantee a profit to any *individual* CLEC, evidence that UNE rates are so high as to preclude *any* efficient CLEC from offering UNE-P on a *Statewide* basis is directly probative on the ultimate public interest issue, *i.e.*, whether the local market in Massachusetts is irrevocably open to competition.[29]

Where, as here, no efficient CLEC could profitably offer UNE-P service at the current UNE rates, and where UNE-based entry offers the only short-term prospect of viable statewide residential competition, the market is obviously not irrevocably open. Thus, it is unsurprising that Verizon's own data fully support that conclusion. Accordingly, approval of Verizon's application would be inconsistent with the public interest, because it would simply permit Verizon – as the only LEC capable of satisfying consumer demand for "one-stop shopping" with bundled offerings of local and long-distance service – to remonopolize the residential long-distance market. WorldCom Comments at 36; AT&T Comments at 28-29.

The overwhelming evidence that the Massachusetts is not irreversibly open to competition also shows that approval of the application would be contrary to the public interest because it would leave virtually no hope for increased competition in the future. Once it receives section 271 approval, Verizon will lose its chief incentive to make UNEs available on

---

[28] As AT&T has previously discussed, although the *SBC Kansas/Oklahoma Order* held that the issue of CLEC profit margins was irrelevant to both checklist compliance and the public interest, AT&T believes that this ruling was erroneous, in light of the obvious relevance of profit margins to both issues. *See* AT&T Comments at 26-29 & n.42.

[29] As WorldCom states, "companies provide service only when they believe they can do so profitably." WorldCom Comments at 35-36.

nondiscriminatory terms and conditions. The ultimate result would be increased prices for consumers, and increased pressure on regulators to re-regulate the once-again monopolized residential phone market – hardly the deregulatory result intended by the 1996 Act.

SBC's pricing behavior since the Commission approved its § 271 application for Texas is ample evidence that the Commission must ensure that a BOC demonstrates that all of its markets are fully and irrevocably open to competition before finding any application is in the public interest. Earlier this month – only seven months after it received Section 271 authority to offer long-distance service in Texas – SBC increased its long-distance rates by approximately 11-33 percent, and its retail rates on DSL service by approximately 25 percent.[30] As CIX notes, in the face of SBC's previous claims that its entry into the long-distance markets would *decrease* prices, the recent increases apparently reflect SBC's belief – and the marketplace reality – that it has no effective competition in Texas. CIX Comments at 11-12. Given the exceedingly high UNE rates and the lack of residential competition in Massachusetts, it is likely that approval of Verizon's application will ultimately result in the same anti-competitive result in Massachusetts, providing yet further evidence that the current application should be denied.

II. THE COMMENTS DEMONSTRATE THAT VERIZON FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO DSL SERVICES.

CLEC's ability to provide DSL service in a timely and reliable manner is critical to their overall ability to compete effectively against the incumbent LECs. Consumer demand for DSL service has increased dramatically within the last year, and is expected to continue its substantial growth for years to come. For example, during the fourth quarter of 2000 the number

[30] *See, e.g.*, CIX Comments at 11-12; V. Bajaj, "SBC Raises Nonlocal Call Rates," *Dallas Morning News*, Feb. 2, 2001; B. Shlacter, "SW Bell Raises Interstate Rate," *Fort Worth Star-Telegram*, Feb. 3, 2001.

of DSL line in service in the United States increased by more than 700,000 (or 41 percent), to a total of 2.4 million lines.[31]

The explosion in consumer demand for DSL service is nationwide, including Verizon's region. Verizon has reported that it added 190,000 lines in the fourth quarter of 2000, bringing its total number of DSL lines to 540,000. A.R.C. Comments at i. Thus, the Verizon region accounts for more than 20 percent of all DSL lines in the United States,[32] and Verizon's DSL subscribership has increased more than *500%* since the end of 1999. In sharp contrast, at the same time Verizon's DSL service was experiencing phenomenal growth, competitive CLECs' DSL efforts began to fail at an alarming rate. Given the undeniable increase in consumer interest, the CLECs' problems were obviously not due to flagging consumer demand. Rather, they were due, at least in large part, to Verizon's failure to provide adequate support for competitive DSL providers.

Because of the growing consumer demand for DSL service, xDSL-capable loops are a substantial and growing proportion of all unbundled loops that CLECs are ordering from the ILECs.[33] Thus, adequate and nondiscriminatory of provisioning of xDSL loops for CLECs by a BOC is vitally important to the success of local competition.[34] Similarly, CLECs providing local exchange service through resale can remain competitive only if Verizon provides resold DSL services on reasonable and nondiscriminatory terms, as required by item 14 of the checklist.

---

[31] *See* "TeleChoice DSL Deployment Projections," at http://www.sdsl.com/content/resources/deployment_info.asp.

[32] According to the web sites of the four RBOCs (BellSouth, Qwest/US West, Verizon, and SBC), Verizon has deployed more xDSL lines than any other RBOC except SBC. These web sites indicate that at the end of 2000, SBC had deployed 767,000 DSL lines, Verizon 540,000 lines, Qwest 255,000 lines, and BellSouth 215,000 lines.

[33] *See, e.g., SBC Texas Order*, ¶ 282 & n.799 (2000) (noting that percentage of xDSL-capable loops as proportion of all loops ordered by CLECs from SWBT increased from 19% to 27% in a two-month period).

[34] *See, e.g., Bell Atlantic New York Order*, ¶ 330 ("Given our statutory obligation to encourage deployment of advanced services, and the critical importance of the provisioning of xDSL loops to the development of the advanced services marketplace, we emphasize our intention to examine this issue closely in the future").

The comments, however, demonstrate that Verizon has to yet provide CLECs with nondiscriminatory access to xDSL loops and to resold DSL services.[35] Although the growing popularity of DSL service would be expected to result in an *increase* in competition in the Massachusetts market, the degree of competitive activity in the Massachusetts DSL market has been *decreasing*. As the Massachusetts Attorney General laments, "DSL competition is dwindling in Massachusetts." Mass. AG Comments at 8. Since January, at least four DSL providers of business or residential service have filed for bankruptcy protection, ceased operations altogether, substantially curtailed their operations (as through the elimination of residential service), or actively solicited a buyer for their assets.[36] At the same time, however, Verizon (or its data affiliate, VADI) is providing increasingly large numbers of retail customers with DSL service.[37]

The comments also show that a significant reason for the reduced competitive activity is Verizon's poor provisioning performance. Thus, they demonstrate that the small levels of DSL loops actually provisioned to CLECs is "largely attributable to [Verizon]'s own

[35] *See, e.g.*, DOJ Eval. II at 3-4 ("the record still fails to provide a clear demonstration of nondiscriminatory performance. Accordingly, [DOJ] remains unable to conclude on the current record that Verizon has adequately demonstrated its ability to provide nondiscriminatory access to DSL loops"); A.R.C. Comments at 3-13; ASCENT Comments at 2-7; CIX Comments at 3-12; Covad Comments at 3-22; Mass. Coalition for Competitive Phone Service Comments at 1; Network Access Solutions Comments at 3-12; Rhythms Comments at 3-21; WorldCom Comments at 24-28.

[36] *See* Mass. AG Comments at 8 & n.16; A.R.C. Comments at i ("more and more competitive data providers are exiting the Massachusetts market"); CIX Comments at 10 ("this lack of competitive opportunity has reached crisis proportion in Massachusetts, as well as elsewhere, as several competitors in the state have exited the DSL market despite their solid management and high-quality networks"); Covad Comments at 5-6 (describing the "alarming' extent "to which Verizon has succeeded in eliminating DSL competitor after competitor in Massachusetts," including Prism's cessation of operations, Northpoint's filing for bankruptcy protection, Jato's cessation of operations, Harvardnet's announcements of its withdrawal from DSL service, and Vitts Networks' statement that it too may shut down); Massachusetts Coalition for Competitive Phone Service Comments at 1 (noting that since Verizon withdrew its original Massachusetts application in December, three DSL providers have closed or filed for bankruptcy "due to Verizon's discriminatory treatment").

[37] *E.g.*, Covad Comments at 4 (noting the "incredible speed at which Verizon is adding linesharing capacity for its own xDSL affiliate" and the 46% increase in the number of DSL lines that Verizon installed in the fourth quarter of 2000, as compared with the third quarter); Rhythms Netconnections Comments at 8-9 (describing Rhythms'

lagging and incomplete compliance with the Commission's advanced services and loop unbundling rules." *See* CIX Comments at 9. And as the Massachusetts Attorney General recognizes, Verizon has "an incentive to provide its competitors with poor DSL service," an incentive that has increased since VADI became operational in Massachusetts in November. Mass. AG Comments at 8.

The comments confirm that Verizon's performance has been poor in several respects. ***First***, Verizon has not provisioned xDSL loops to CLECs in a nondiscriminatory, timely fashion. As the DOJ states, "For certain important measures, Verizon's reported performance still falls below prescribed standards." DOJ Eval. II at 8. For example:

- Verizon has installed only approximately 83.6 percent of DSL loops within 6 business days – far short of the 95 percent standard that Verizon is required to meet. In fact, the average installation interval for these loops was 8.32 days. And even that performance is overstated, due to the highly questionable methodology that Verizon uses to calculate the underlying data. *See* DOJ Eval. II at 8-9; NAS Comments at 3-7; Rhythms Comments at 5-6, 10-18. To take but one example, Verizon proposes to exclude from its calculation of the percentage of loop orders installed within 6 business days all orders where the CLEC customer was not at home when the Verizon technician arrives. However, such an exclusion would be unfair and discriminatory, because: (1) Verizon often gives its own retail customers a two-hour window for loop installation calls, but *always* gives CLEC customers an eight-hour appointment window (even though many CLEC customers cannot commit to staying home for an entire day); and (2) Verizon's own performance data show that its conduct is to blame for a large percentage of these "no-access" cases. NAS Comments at 3-4.
- Verizon's reports show "significantly fewer lines completed within six days for CLECs than for Verizon or its separate data affiliate, VADI." DOJ Eval. II at 8-9 & nn.23-24.
- Verizon installs a significant number of loops for CLECs later than the promised due date. DOJ Eval. II at 9. Verizon's performance for NAS was even worse than the overall rate, and actually declined in October and November. In New York, where it provisions far larger volumes of orders, Verizon failed to meet the due date nearly 20 percent of the time – almost

inability to submit orders in certain central offices in Massachusetts and New York, while Verizon, or its affiliate, "was cranking up volumes of line sharing orders").

twice the rate that this Commission has previously described as "marginally acceptable." NAS Comments at 9-11. Thus, there is no evidence from New York that provides support for an assumption that Verizon will perform adequately in Massachusetts.

- Verizon's data show a "substantial lack of parity" in installation troubles on DSL lines within 30 days. The rate of installation troubles is substantially higher for CLECs than for Verizon or VADI. DOJ Eval. II at 10 nn.34-35; NAS Comments at 11.
- Verizon's performance in meeting DSL repair appointments for CLECs has been inconsistent, and its mean time to repair CLEC lines has generally been much longer than for itself or for VADI. DOJ Eval. II at 11.

Second, Verizon has failed to demonstrate that, as a practical matter, it is willing and able to handle orders for line splitting today, even though the Commission's decisions required to do so. And despite the fact that Verizon has only recently adopted a "policy" to provide UNE-P carriers access to line splitting on nondiscriminatory terms and conditions, it has provided no data from commercial usage or testing that demonstrate its ability to do so.[38] Indeed, there is no evidence that Verizon even has a process in place to enable CLECs to participate in line splitting. *See* WorldCom Comments at 24-28.

Indeed, the comments show that Verizon has in fact made every effort to avoid its line splitting obligations. For example, as WorldCom states, after the DTE issued an "abundantly clear" order requiring line splitting, Verizon declined to tariff a line splitting product or promulgate applicable business rules. Instead, Verizon engaged in "pointless regulatory evasion – a motion to the DTE to 'clarify' its abundantly clear order." *Id.* at 26. Moreover,

[38] Verizon's line splitting "policy," issued on February 14, 2001, contains significant limitations and qualifications. For example, the "policy" states that CLECs seeking to migrate existing UNE-P configurations to a line splitting configuration using the same UNEs as those in the preexisting platform arrangement "may do so consistent with such implementation schedules, terms, conditions and guidelines as are agreed upon for such migrations in the ongoing DSL collaborative in the State of New York, NY PSC Case 00-C-0127, allowing for local jurisdictional and OSS differences." *See* Verizon memorandum to CLECs, "Line Splitting Policy," dated February 14, 2001. In other words, Verizon will provide line splitting on the terms to which it agrees in the New York collaborative proceeding – and reserves the right to adopt different terms in other jurisdictions. *See also* Declaration of Robert J. Kirchberger, E. Christopher Nurse, and C. Michael Pfau filed on February 12, 2001 in Docket No. M-00001435 (Pa. Public Service Commission), ¶ 21 (describing similar "policy" adopted by Verizon with respect to Pennsylvania).

Verizon refused to acknowledge that it had any obligation to facilitate line splitting on Covad's orders where the Covad customer is not a Verizon voice customer; instead, Verizon simply rejected them. Covad Comments at 9-10.

The DTE also effectively admits that Verizon has not met its line splitting obligations, but urges that the Commission find no Section 271 violation on this basis in view of "the recent nature of both its and the [DTE's] clarifying Orders on line splitting." DTE Eval. at 39-41. This is simply impermissible. Line splitting is required by the Commission's longstanding regulations – as the Commission expressly recognized in the *SBC Texas Order.*[39] Moreover, ILECs are required to "allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place," and BOCs must "demonstrate, in the context of Section 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line-split services." *Line Sharing Reconsideration Order*, ¶ 20 n.36. Allowing Verizon a "pass" on its line splitting obligations in this proceeding not only would be inconsistent with the Commission's own clear rulings, but would increase Verizon's already-substantial competitive advantage in Massachusetts. According to Verizon's own data, Verizon is already providing voice and data services over a single loop to a substantial and ever-growing volume of customers for its affiliate.[40] Therefore, Verizon must also at least demonstrate that it has a nondiscriminatory process in place to support its competitors' activities.

__Third__, the comments demonstrate that Verizon has not met its obligation to provide line sharing, more than one year after the Commission ordered CLECs to do so and more

[39] *See SBC Texas Order*, ¶ 325 (stating that incumbent LECs have an obligation "to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter" under the Commission's regulations, 47 C.F.R. § 51.307(c), which requires incumbent LECs to provide CLECs with access to unbundled loops in a manner that allows them "to provide any telecommunications service that can be offered by means of that network element"). *See also SBC Kansas/Oklahoma Order*, ¶ 220 & n.635; WorldCom Comments at 24.

than eight months after the June 6, 2000 implementation date established by the Commission.[41] Instead, Verizon has imposed obstacle after obstacle to impede the CLECs' ability to offer line-shared services. For example, Covad is currently unable to order line sharing in more than 130 of Verizon's central offices (a majority of which are located in Massachusetts and New York) because Verizon advised it earlier this month that they require "corrective action on build issues." Covad Comments at 3-4, 6-8 & Clancy Decl.

Similarly, Rhythms is still precluded from serving customers through line sharing in some Verizon central offices, even though Rhythms submitted applications to Verizon last April for the rewiring work necessary to support line sharing in those offices, and even though Verizon represented to Rhythms in June that the work had been completed. Once Rhythms began sending orders last June, it soon realized that the work was not complete, as its orders backlogged from September through November. After Verizon failed to respond to Rhythms' escalations in a timely fashion, Rhythms was forced to stop sending orders for the central offices where the work had not been properly completed. Because of Verizon's slow process of conducting quality inspections of these central offices, Rhythms was unable to submit orders for those offices from September through January. Even today, the work is not fully complete. Rhythms Comments at 6-10 & Williams Supp. Decl., ¶¶ 3-13. Worse, while Rhythms and Covad have been experiencing their respective inabilities to place orders for line sharing, Verizon has provisioned large volumes of such orders for itself or its affiliate. Rhythms Comments at 9; Covad Comments at 4, 6.

These facts alone should preclude any finding that Verizon has met its obligation to provide CLECs with nondiscriminatory access to line sharing. The "small number of line

---

[40] *See* WorldCom Comments at 26-27; Lacouture/Ruesterholz Joint Supp. Decl., ¶ 144.

sharing orders in Massachusetts" (DTE Eval. at 35) is not a reflection of competitors' unwillingness to provide, or customers' unwillingness to obtain, a competitive alternative to Verizon's service. Rather, it is clearly a reflection of Verizon's failure to meet its line sharing obligations. But, even leaving these facts aside, the performance data provided by Verizon are patently insufficient to support a finding of compliance, because the data for November 2000 is the first month of data for which there were over 100 CLEC observations (and the first month for which there is data for VADI). Moreover, Verizon itself acknowledges that those data "may overstate [its] on-time performance somewhat," because they may include instances where Verizon marked some CLEC orders as complete even when the splitter was not installed correctly.[42]

Fourth, the comments demonstrate that, in violation of its obligations under Section 251(c)(4) and checklist item 14, Verizon has imposed unreasonable and discriminatory conditions on the resale of DSL services.[43] As a result of such conditions, A.R.C. was forced to stop offering resold DSL service. Last April, A.R.C.'s planned rollout of resold DSL service was delayed because Verizon advised it that the responsibility for the provisioning of ADSL service for resale was being transferred to Verizon's data affiliate. After the transition finally took place, A.R.C.'s orders were rejected because the affiliate was unprepared to process the orders. When the affiliate was finally ready to process the orders, it imposed discriminatory conditions on resale, including a requirement that any A.R.C. customer purchase a retail line from Verizon – making it impossible for A.R.C. to offer both DSL and voice service to its customers (as Verizon does in its retail operations). The affiliate also imposed a requirement that

[41] CIX Comments at 23-24; Covad Comments at 6-8; Rhythms Comments at 5-10.

[42] *See* Verizon Br. at 30 n.25; DOJ Eval. II at 13; Lacouture/Ruesterholz Joint Supp. Decl., ¶¶ 155-156.

[43] *See* A.R.C. Comments at 2-8; ASCENT Comments at 2-7.

A.R.C. use a separate proprietary interface of Verizon (which was initially manual) to place orders for DSL service, thereby increasing A.R.C.'s costs. These requirements also meant that A.R.C.'s customers would receive two separate bills – one from A.R.C. for DSL service, and one from Verizon for voice service. Equally important, as a result of the condition that A.R.C.'s customers purchase a retail line from Verizon, A.R.C. was effectively required to pay retail rates to Verizon without a discount – a direct violation of Section 251(c)(4). A.R.C. Comments at 2-5, 7-8; ASCENT Comments at 2-7.

In view of these deficiencies in its performance, the DTE's conclusion that Verizon has met its obligations with respect to DSL is entitled to no weight. *See* DTE Eval. at 23-41. The DTE's analysis is also flawed because it relied on purportedly "independent" analyses of Verizon's performance with respect to xDSL loops and line sharing (including an assessment of Verizon's performance data) by Price Waterhouse Coopers ("PWC") and Lexecon Strategy Group ("Lexecon"), *see id.* at 2-5, 24-29, 34-35, 37, that were not in fact "independent," because both PWC and Lexecon were hired by, and reported directly to, Verizon.[44] Thus, it is hardly surprising that these analyses are shallow and superficial. As Covad demonstrates, for example, PWC "simply checked Verizon's math," and did not verify Verizon's actual performance or the underlying source data that Verizon used to compile its metrics report. Covad Comments at 16-20. PWC's "analyses" of Verizon's line sharing performance and Verizon's treatment of its advanced services affiliate, were similarly flawed. *Id.* at 20-22. In short, the analyses cited by the DTE provide no reliable basis for its conclusions.

For these reasons, the evidence demonstrates that Verizon has not met its DSL-related obligations – and certainly will not meet them in the future, if it is granted Section 271 authority at this time. Moreover, the recent SBC price increases on retail DSL service in Texas discussed above amply illustrate the results of a BOC's entry into the long-distance market before it has fully satisfied those obligations. In this respect, the comments of A.R.C. are telling:

> A.R.C. was one of the CLECs that supported Bell Atlantic's application for 271 authority in New York, and it did so with the belief that Bell Atlantic would remain true to its statutory obligations. *The intervening period has proven otherwise*, and this Commission should require an unequivocal declaration from Verizon that it will come into compliance with its statutory obligations in regard to resale of DSL service *before* Section 271 authority is granted.

A.R.C. Comments at iii (emphasis added).

III. THE COMMENTS ALSO DEMONSTRATE THAT VERIZON IS NOT PROVIDING ADEQUATE ACCESS TO SPECIAL ACCESS SERVICES.

The comments submitted by CompTel and Global Crossing North America ("Global") also show that Verizon has failed to provide timely, nondiscriminatory access to special access services. *See* CompTel Comments at 2-4 & Hennesy Aff., ¶¶ 3-10; Global Crossing Comments at 1-5 & Peters Aff., ¶¶ 4-10. AT&T shares these concerns, and is equally concerned about the effect of Verizon's long-distance entry into Massachusetts on the long-term outlook for improved special access performance.

For example, Verizon failed to provision more than 50 percent of the DS1 circuits ordered by Cable & Wireless by the scheduled due date in Massachusetts, and failed to provision even one entrance facility ordered by Global by Verizon's commitment date. In fact, of the two orders that Global placed for entrance facilities in Boston, Verizon did not complete one order until almost four months after the due date, and the other order is still pending more than one month after the scheduled commitment date. Because of an alleged lack of SONET interoffice

[44] *See, e.g.*, Lacouture/Ruesterholz Joint Supp. Decl., ¶ 81; Sapienza/Mulcahy Supp. Decl., ¶ 9. *See also* DOJ Eval. II at 8 n.22 (noting that PWC was hired by Verizon). *Compare Bell Atlantic New York Order*, ¶¶ 22, 96, 99 (noting

facilities, Verizon has placed orders that encompass numerous DS1s and DS3s on a "hold" status, with an average delay of 86 days past the confirmed date. *Id.*

AT&T's own experience is remarkably similar to the conditions described by CompTel and Global Crossing. In recent months, AT&T has had a large percentage of orders for special access facilities placed on "hold" due to Verizon's self-confessed lack of facilities. Further, Verizon has made it clear to AT&T that it does not anticipate any relief until the second quarter of 2001.

However, the lack of facilities does not explain the full extent of Verizon's poor special access performance. AT&T special access orders are routinely delayed because AT&T is unable to get a customary status notice from Verizon and instead must rely on business-to-business escalations to get even the most basic of acknowledgments. Even after such escalations, Verizon frequently fails to meet either its self-defined intervals for providing Firm Order Confirmations ("FOCs") or other critical dates. Most disturbing, AT&T has received reports from its customers that Verizon has provided comparable facilities with relatively quick turnaround when orders are placed directly by AT&T's end-user customers, rather than through AT&T.[45]

Verizon's performance demonstrates its inability to provision UNEs and special access services simultaneously and adequately. CompTel Comments at 3; Global Crossing Comments at 5. Furthermore, Verizon's deficient performance clearly has had a detrimental effect on competitive entry, since they result in increased costs and call blockage for CLECs.

---

that KPMG was hired by, and reported directly to, NYPSC for purposes of conducting test of Bell Atlantic's OSS).

[45] AT&T has raised its concerns regarding special access performance both to Verizon through business-to-business negotiations, and to the DTE through informal meetings with the DTE Staff. Recently, AT&T was advised that the DTE plans to open an investigation concerning Verizon's special access performance, due to the complaints of AT&T. Similarly, the New York Public Service Commission has instituted an investigation of Verizon's provisioning of special access services, in response to a complaint by Focal Communications (joined by AT&T).

Cable & Wireless estimates that it continues to lose approximately 10 percent of its customers in the Verizon territory because of service provisioning problems for which Verizon is responsible, and Global estimates that it has lost $4 million as a result of Verizon's inability to provision trunking circuits. CompTel Comments, Hennesy Aff., ¶ 10; Global Comments at 5 & Peters Aff., ¶ 9.[46] Although AT&T has not quantified the precise extent of the damage that it has sustained as a result of Verizon's poor performance in the provision of special access services, it is clear that Verizon's delays have caused AT&T to lose substantial revenues.

This evidence of Verizon's poor performance for CLECs demonstrate the need for the development of performance measurements to monitor Verizon's performance in the future, particularly after Verizon receives Section 271 approval. As noted by CompTel and Global, Verizon is currently under no requirement to report data comparing its performance for CLECs to that rendered for itself or its affiliate. CompTel Comments at 2; Global Comments at 5-12. The absence of such data not only underscores the need for the adoption of performance metrics that can meaningfully measure whether Verizon is giving preferential treatment to its Section 272 affiliate.

---

[46] It is possible that these quantifications reflect only a small part of the impact of Verizon's poor special access performance. Since CLECs rely on these facilities for the provision of all of their services, including service that is local in nature, Verizon's poor performance has a "ripple effect" on the dynamics of all competitive markets.

CONCLUSION

For the reasons stated above and in AT&T's prior Comments, AT&T respectfully submits that Verizon's Supplemental Application should be denied.

Respectfully submitted,

David W. Carpenter
Mark E. Haddad
David M. Levy
David L. Lawson
Richard E. Young
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, D.C. 20006
(202) 736-8000

Mark C. Rosenblum
Richard H. Rubin
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4481

Attorneys for AT&T Corp.

February 28, 2001